

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.16378 of 2015

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ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“To issue a writ, order or direction more particularly one in the nature of writ of Mandamus -declaring the memo No. C No. 5778 /A7/2013 dt. 28.1.2014 issued by 4th respondent in refusing to recognize the petitioner as the son of Police Martyr Late Shankar Jee and to grant Police Martyr Children Certificate to the petitioner as illegal, arbitrary and direct the respondents 3 and 4 to issue Police Martyr Children Certificate to the petitioner being son of late Mangalagiri Shankar Jee and further direct the 1st respondent to consider the petitioner in quota reserved for Police Martyr Children for the admission into 1st year MBBS Course for the academic year 2015-16.”

2. Heard Sri Kiran Palakurthi, learned counsel for the petitioner and the learned Government Pleader for the official respondents apart from perusing the material available on record.

3. The deponent of the writ affidavit, who is the mother and natural guardian of the petitioner herein, states that she is the second wife of one late Mangalagiri Shankar Jee, who lost his life due to extremists attack on the intervening night of 26/27.08.2002 while discharging his duties as police constable at Chitriyala Jathara. It is further stated that out of their wedlock they begot the petitioner on 17.11.1997. Petitioner made an application to the Superintendent of Police, Nalgonda, Nalgonda District/fourth respondent herein for issuance of Police Martyrs Children Certificate to claim the benefits under G.O.Ms.No.106, Health, Medical & Family Welfare (E1) Department dated 16.07.2013. By way of Memo C.No.5778/A7/2013 dated 28.01.2014, the fourth respondent refused to issue the said certificate. Assailing the same, petitioner filed W.P.No.16445/2014 and according to the petitioner with a fond hope that the fourth respondent herein would consider his claim, the said writ petition was withdrawn. Subsequently, the deponent in the present writ petition made a representation to the fourth respondent requesting for reconsideration on

06.06.2014 and as per the petitioner herein the same proved to be futile.

4. Pleading in the manner indicated *supra*, the present writ petition has been instituted.

5. When the matter is called today, written instructions furnished by the Superintendent of Police, Nalgonda, Nalgonda District/fourth respondent herein addressed to the office of the learned Government Pleader have been placed on record by the learned Government Pleader wherein it is stated that the petitioner submitted a petition to the then Superintendent of Police, Nalgonda, Nalgonda District on 12.11.2013 for issuance of Police Martyrs Children Certificate to get admission into MBBS/Medicine under the provisions of G.O.Ms.No.106 dated 16.02.2013 and the Superintendent of Police, Nalgonda, Nalgonda District endorsed and issued instructions to the Inspector of Police, Special Branch to enquire into the matter and submit a report, who in turn submitted a report to the Superintendent of Police/fourth respondent herein vide C.No.153/SB-NGA/2013 dated 28.12.2013. Evidently, basing on the said report, the fourth respondent herein rejected the claim of the petitioner. Along with the instructions, the said report is also filed.

6. It is contended by the learned Government Pleader that the impugned action of refusing to issue Police Martyrs Children Certificate to the petitioner herein is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India and the said action deprives the seat to the petitioner herein in medicine. It is also submitted that the impugned action is opposed to Section 16 of the Hindu Succession Act, 1956 and the voluminous material available on record clearly shows that the petitioner is the son of late Shankarlal Jee and the deponent herein. In support of his submissions and contentions, the learned counsel for the petitioner places reliance on the judgments of the Hon'ble Apex Court in **KAMESHWARI DEVI v. STATE OF BIHAR AND OTHERS** and **REVANASIDDAPPA AND ANOTHER v. MALLIKARJUN AND OTHERS**.

7. On the contrary, it is vehemently contended by the learned Government Pleader that there is no illegality nor infirmity in the impugned action and the Superintendent of Police/fourth respondent herein is perfectly justified in refusing the claim of the petitioner in the absence of evidence with regard to the inheritance of the petitioner from the deceased Mangalagiri Shankar Jee. It is also the submission of the learned

Government Pleader that in view of report of the Inspector of Police dated 28.12.2013 no relief can be granted. It is also the submission of the learned Government Pleader that in view of dismissal of W.P.No.16445/2014 the present writ petition is not maintainable.

8. The Government of Andhra Pradesh in the year 2013 brought in amendment to the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2007 and added the following after sub-Rule (iv) of Rule 3 of G.O.Ms.No.136, Health, Medical & Family Welfare (E1) Department dated 30.04.2007:

“0.25% for Police Martyrs Children (PMC) i.e., Children of Police Professional who died in extremist/terrorist violence subject to production of documentary evidence in support of their claim and subject to confirmation by the competent authority.”

9. The government published the above notification by way of G.O.Ms.No.106, Health, Medical & Family Welfare (E1) Department dated 16.07.2013.

10. In the instant case, the petitioner herein is claiming the benefit under the said Rule. The Superintendent of Police, Nalgonda, Nalgonda District/fourth respondent herein by way of Memo bearing C.No.5778/A7/2013 dated 28.01.2014 refused to issue the Police Martyr Children Certificate, saying that the deponent is not the legal heir of the deceased Shanker Jee as per the statements recorded in the enquiry report by the Inspector of Police, Special Branch. In the report of the Inspector dated 28.12.2013, which is placed on record, it is stated that in the absence of legal inheritance from the deceased Shanker Jee, the petitioner cannot get any benefit from the police department. It is also stated that Mr.Madhu Babu, the Senior Assistant in D.G.P Office, Hyderabad vehemently opposed for extending any kind of benefit to the deponent. Another objection mentioned in the report is that in view of the agreement entered into between M.Doulath Bai and the deponent herein on 05.10.2002, any benefits or facilities or aid extended by the Government, shall go to Smt.M.Doulath Bai only.

11. In the instant case, the petitioner is asking for the Police Martyr Children Certificate only for the purpose of availing the statutory benefit under the Rules i.e for securing a seat in MBBS. The respondents herein are not specifically disputing the relationship of the petitioner with late Shanker Jee and the status of the petitioner as

son of late Shanker Jee. The statutory right of Douloth Bai nor her children have nothing to with this benefit. The reasons assigned by the respondents in denying the claim of the petitioner are highly iniquitous, palpably untenable, preposterous and reprehensible.

12. As rightly contended by the learned counsel for the petitioner. under Section 16 of the Hindu Succession Act, 1956, the petitioner shall be treated on par with the children of late Shanker Jee through his first first wife. The objection of Mr.Madhu Babu, son of Douloth Bai, as mentioned in the enquiry report is of no significance at all as he has no rival claim with the petitioner. Another vital aspect which needs mention is that in O.S.No.29/2014 filed by the deponent and the petitioner herein before the Court of the Junior Civil Judge, Devarakonda, the Tahisildar filed a written statement, admitting the relationship of the petitioner with late Shanker Jee as father. Even in the enquiry report of the Inspector of Police, Special Branch, dated 18.12.2013, it is stated that the deponent got a son by name Mr.Sairam though deceased late Shakder Jee who was 7 years old. By any stretch of imagination the claim of the petitioner cannot be denied for Police Martyr Children Certificate when the paternity is not in dispute. In this context, it may be appropriate to refer to the judgments of the Hon'ble Apex Court in the case of **KAMESHWARI DEVI** (*supra* 1) and **REVANASIDDAPPA AND ANOTHER** (*supra* 2).

13. In **KAMESHWARI DEVI** (*supra* 1), the Hon'ble Apex Court at paragraphs 14, 15 and 16, held as follows:

“14. It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of Clause (i) of Section [5](#) of the Hindu Marriage Act and was a void marriage. Under Section [16](#) of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in Clause (1) which include widow and son. Among the widow and son, they all get shares (see Sections [8](#), [10](#) and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described a widow of Narain Lal, her marriage with Narain Lal being void. Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, legal position when Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement gratuity payments which is governed by the relevant rules, It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned single Judge in the

judgment which is upheld by the Division Bench in LPA by the impugned judgment.

15. Rameshwari Devi has raised two principal objections : (1) marriage between Yogmaya Devi and Narain Lal has not been proved, meaning thereby that there is no witness to the actual performance of the marriage in accordance with the religious ceremonies required for a valid Hindu marriage and (2) without a civil Court having pronounced upon the marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights, it cannot be held that the children of Yogmaya Devi with her marriage with Narain Lal would be legitimate under Section [16](#) of the Hindu Marriage Act. First objection we have discussed above and there is nothing said by Rameshwari Devi to rebut the presumption in favour of marriage duly performed between Yogmaya Devi and Narain Lal. On the second objection, it is correct that no civil Court has pronounced if there was a marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act. on that in order to grant pensionary and other benefits to the children of Yogmaya Devi. On this aspect we have already adverted to above. After the death of Narain Lal, inquiry was made by the State Government as to which of the wives of Narain Lal was his legal wife. This was on the basis of claims filed by Rameshwari Devi. Inquiry was quite detailed one and there are in fact two witnesses examined during the course of inquiry being (1) Sant Prasad Sharma, teacher, DAY High School, Danapur and (2) Sri Basukinath Sharma, Shahpur Maner who testified to the marriage between Yogmaya Devi and Narain Lal having witnessed the same. That both Narain Lal and Yogmaya Devi were living as husband and wife and four sons were born to Yogmaya Devi from this wedlock has also been testified during the course of inquiry by Chandra Shekhar Singh, Rtd. District Judge, Bhagalpur, Smt. (Dr.) Arun Prasad, Sheohar, Smt. S. N. Sinha, w/o Sri S. N. Sinha, ADM and others. Other documentary evidence were also collected which showed Yogmaya Devi and Narain Lal were living as husband and wife. Further, the sons of the marriage between Yogmaya Devi and Narain Lal were shown in records as sons of Narain Lal.

16. Having considered all the facts of the case as presented before us we do not find any error in the impugned Judgment of the Division Bench of the Patna High Court upholding the judgment of the learned single Judge referred to in the beginning of this judgment. The appeal, therefore, fails and is dismissed. However, there shall be no order as to costs.”

14. In **REVANASIDDAPPA AND ANOTHER** (*supra* 2), the Hon’ble Apex Court at paragraphs 39 and 40, held as follows:

“39. We are constrained to differ from the interpretation of Section [16\(3\)](#) rendered by this Court in **Jinia Keotin** (*supra*) and, thereafter, in **Neelamma** (*supra*) and **Bharatha Matha** (*supra*) in view of the constitutional values enshrined in the preamble of our Constitution which focuses on the concept of equality of status and opportunity and also on individual dignity. The Court has to

remember that relationship between the parents may not be sanctioned by law but the birth of a child in such relationship has to be viewed independently of the relationship of the parents. A child born in such relationship is innocent and is entitled to all the rights which are given to other children born in valid marriage. This is the crux of the amendment in Section [16\(3\)](#). However, some limitation on the property rights of such children is still there in the sense their right is confined to the property of their parents. Such rights cannot be further restricted in view of the preexisting common law view discussed above.

40. It is well known that this Court cannot interpret a socially beneficial legislation on the basis as if the words therein are cast in stone. Such legislation must be given a purposive interpretation to further and not to frustrate the eminently desirable social purpose of removing the stigma on such children. In doing so, the Court must have regard to the equity of the Statute and the principles voiced under Part IV of the Constitution, namely, the Directive Principles of State Policy. In our view this flows from the mandate of Article [37](#) which provides that it is the duty of the State to apply the principles enshrined in Chapter IV in making laws. It is no longer in dispute that today State would include the higher judiciary in this country.

15. For the aforesaid reasons and having regard to the nature of controversy and having regard to the principles laid down in the above referred judgments, the writ petition is allowed:

- i. Setting aside the Memo bearing C.No.5778/A7/2013 dated 28.01.2014 issued by the fourth respondent herein.
- ii. Directing the respondents to issue Police Martyr Certificate in favour of the petitioner herein to claim admission in terms of G.O.Ms.No.106, Health, Medical & Family Welfare (E1) Department dated 16.07.2013.
- iii. Since the verification of certificates is commencing shortly the respondents are directed to permit the petitioner to participate in the process of certificate verification and for allotment of seat in MBBS with an undertaking that the petitioner will produce the Police Martyr Certificate after receipt of the same from the competent authority.

As a sequel, Miscellaneous Petitions, pending if any, shall also stand disposed of. No costs.

A.V.SESHA SAI,J

Date: 17.06.2015

grk

Note:

Office to furnish

CC in two days.

b/o grk

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.16378 of 2015

Dated 17th June, 2015

Between:

Mangalagiri Sairam S/o Late M.Shankar Jee,

Minor, Aged 17 years, Occ: Student represented

by his mother and natural guardian Smt.Mangalagiri

Mamatha w/o. Late M.Shankar Jee,

Aged 40 years, Occ: Private Service,

R/o Flat No.104, Ashritha Apartments,

Nagarjunanagar, Tarnaka, Secunderabad.

... Petitioner

and

The Jawaharlal Nehru Technology University,
Represented by its Registrar (Convener, EAMCET-2015),
Hyderabad, Telangana State and others.

... Respondents



THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

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Dated 17th June, 2015